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## The Legal Approach: Women's Rights as Human Rights

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## POINT/COUNTERPOINT

### The Legal Approach: Women's Rights as Human Rights

by Rachael N. Pine

The 1993 World Conference on Human Rights in Vienna strengthened international commitment to the fundamental principle that women's rights are human rights. This year, the International Conference on Population and Development (ICPD) in Cairo has prompted the international community to focus on the role of women's human rights in the context of population policy.

The Programme of Action which emerged from the ICPD emphasizes the importance of women's human rights in both population and development objectives. It reiterates that a better quality of

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life for individual human beings must be the focus of government policies, and that "the human rights of women...are an inalienable, integral and indivisible part of universal human rights." In particular, in a section titled Reproductive rights and Reproductive Health, the Programme makes the important statement that "reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other relevant United Nations consensus documents" and reiterates the principle that there is a "basic right of all couples and individuals to decide freely and responsibly the number, spacing, and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health." The Programme goes on to state that the right "includes the right of all to make decisions concerning reproduction free of discrimination, coercion, and violence..."

[These statements in the Programme of Action reflect a growing acknowledgement by the international community] that the right to reproductive health care, in a social and health care system that ensures informed and voluntary

reproductive choice, is within the scope of existing international human rights treaties and conventions. Among these are the United Nations Charter, the Universal Declaration of Human Rights, the Economic and Social Covenant and the Convention on the Elimination of All Forms of Discrimination Against Women. Collectively, these international legal instruments guarantee individuals a right to health care, the benefits of scientific progress, privacy and security of the person, gender equality, non-discrimination, and freedom from government interference in marriage and family life.

Sovereign legal systems also play a role in insuring reproductive rights and health. The law's condemnation or approval of reproductive rights and health, even if unenforced or unknown to most of a population, can exert subtle and even pronounced influences on the reproductive health care options available to women and on the reproductive choices the women make.

Sovereign laws that restrict the availability or legality of contraception, sterilization and abortion can severely curtail the ability of individuals to control and time their own fertility...Restrictive abor-

tion laws unequivocally illustrate the health consequences of such measures. Illegality, coupled with the lack of safety characterizing the abortion services that

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are nevertheless available, has resulted in the deaths of between 70,000 and 170,000 women around the world each year — a figure that does not include the untold number of women suffering serious injury, infection or hemorrhage.

Factors affecting women's socio-economic status and quality of life can also help guarantee freedom of reproductive

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### Universalism v. Cultural Relativism: The Impact on Women's Rights

by Ayesha Qayyum

One of the more controversial aspects of the debate over women's human rights is the question of who defines the substance of these rights. The International Conference on Population and Development, held in Cairo from September 5-13, 1994, focused the world's attention on the issue of promoting women's equality by expanding the reproductive choices available to women. While many population experts and women's groups in the West viewed the Programme of Action adopted by participant States as a major victory for women's rights, many in the developing world objected to what they considered a Eurocentric model of women's rights.

The following articles present opposing viewpoints as to the definition of women's human rights. Rachael N. Pine is Director of International Programs and Domestic Legal Projects at The Center for Reproductive Law and Policy. In her previous work with the Reproductive Freedom Project of the American Civil Liberties Union, she was Counsel of Record in the United States Supreme Court case of *Rust v. Sullivan*, which challenged the U.S. Department of Health and Human Services policy of restricting information about abortion in federally-funded family planning clinics. Her article is adapted from a larger piece, written before the Cairo Conference, which originally appeared in the Fall 1994 issue of *Harvard International Review*. Azizah al-Hibri is Associate Professor of Law at the University of Richmond, where she teaches International Law, Islamic Jurisprudence, and Family Law among other subjects. She has authored many works in the fields of law, philosophy, feminist theory, and human rights. Her essay was written especially for *The Human Rights Brief*. ●

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the number, spacing, and timing of their children, but also to obtain the information and means to do so. States therefore have a duty to dismantle obstacles to the free flow of information regarding reproductive health issues, and to ensure that individual decision-making concerning reproduction is free from discrimination, coercion, and violence.

Women must first be respected as "human beings with human rights," insisted Cecilia Medina-Quiroga, Professor of International Human Rights Law at the University Diego Portales and the University of Chile. Medina-Quiroga noted that women's human rights are marginalized and violated throughout the world, while Berta Hernández, Professor of Law at St. John's University School of Law, pointed out that "the UN classifies women as the largest excluded group in the world." Although the rate of growth of global population is of alarming proportion, "that's no justification for abusive measures" against women, agreed Rebecca Cook, Director of the International

Human Rights Programme at the University of Toronto, and Conference keynote speaker. Cook and other participants also stresses the importance of interdisciplinary approaches to promoting women's health and human reproductive rights.

Despite past subordination of women's rights and concerns in issues of population and development, Conference speakers generally concurred that since

the UN World Human Rights Conference held in Vienna in 1993, where women's organizations surprised many with their level of preparation and vigor, women's rights have become more widely debated and addressed in international law. Moreover, they noted that the Cairo Conference furthered the goal of women's rights by building on the concept of the empowerment of women.

Conference panel themes included: Reproduction, Rights and Reality: How Facts and Law Can Work For Women; The Utility and Limits of Rights-Based Approaches; The Right To Health; The Impact of Reproductive Subordination on Women's Health; Civil and Political Rights and the Right to Non-Discrimination; and Religious and Cultural Rights. The proceedings of the Conference will be published in *The American University Law Review* in March 1995. ☉



Conference speakers (left to right): Acting Executive Director of Profamilia in Bogotá, Columbia María Isabela Plata; Senior Advisor for the Child Survival Unit at UNICEF Monica Sharma; and Director of the International Human Rights Law Clinic at WCL Rick Wilson.

Gabriel Eckstein

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choice. Thus, domestic laws structuring the conditions in which women live and work are also critical to allowing them to make reproductive choices.

Although the phrase "human rights" is sometimes used loosely to express general norms of justice and human dignity, the term refers equally to system of rights

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guaranteed under the law. In assessing the contribution of the human rights framework to the formulation of population policies, it is useful to consider the national and international legal dimension outlined above. The legal expression of ethical or medical norms provides neutral, generally acceptable standards for assessing the minimum required qual-

ity of reproductive health care. It institutes accountability and the potential of enforcement against violators of these standards. It also creates a "safe harbor" or zone of protection for a specified range of reproductive options and medical procedures. Finally, it asserts the importance of individual needs over the politically determined community good. Although rights are never absolute in legal terms, the implementation of population policies consistent with such a framework implies recognition of at least a presumptive entitlement to the rights for individuals as well as the gravity of their deprivation.

To make population policies fully supportive of women's rights, countries must modify restrictive national laws, enforce laws that ensure women's rights and reassess policies of non-ratification of international treaties that bear on women and reproductive rights. Countries should adopt measures that reinforce the significance of the rights of women in all policies and programs and ensure even-handed prohibition of compulsion, coercion and discrimination in all medical and counseling services.

Governments should offer an approach to family planning that includes a wider range of reproductive health care options that fully respect the choices of individuals to have or not have children and the choices of women to continue or terminate pregnancy. Finally, they should adopt laws, policies and programs that promote the legal, medical, social and economic conditions that empower women, thereby making reproductive health and reproductive choice a reality of daily life. This is indeed a daunting agenda. But it is long overdue. ☉